

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Acme Contracting, Ltd.,

Plaintiff,

v.

Case No. 07-10950

Toltest, Inc. *et al.*,

Honorable Sean F. Cox

Defendants.

ORDER FOLLOWING REMAND

Following a bench trial, this Court issued an Opinion & Order awarding Plaintiff Acme Contracting, Inc. (“Acme”) \$2,025,330.65 in damages. This Court ultimately entered a money judgment of \$2,096,876.21 in favor of Acme, which includes: 1) \$2,025,330.65 in damages; 2) \$44,812.04 in prejudgment interest under Ohio law; and 3) \$26,733.52 in interest under Michigan law. Defendant Toltest, Inc. (“Toltest”) appealed.

In an unpublished opinion issued on March 24, 2010 (Docket Entry No. 113), the Sixth Circuit Court of Appeals affirmed this Court’s “judgment with respect to Acme’s entitlement to an award of damages,” but remanded “for further proceedings on the very limited issue of the calculation of quantum meruit damages (for time and materials grading and shoring work) awarded outside the 01-Contract and delay damages awarded under 01-Contract to determine whether double-counting occurred with respect to those discrete categories of damages.” (*Id.* at 2). The Opinion states:

The delay costs Acme claimed for July 19 and 20, 2006, include no discernible double-counting.

Our review of the record, however, indicates that double-counting may

have occurred **on August 15, 2006, and from August 17-27, 2006, with respect to Acme's charges for employees, equipment, and incidentals, as set forth in Exhibit 215**, and that Acme may have recovered those charges twice, once as delay damages under the 01-Contract and again as quantum meruit damages (for time and materials work for grading and shoring) outside the 01-Contract. Accordingly, remand on this **very narrow issue** is warranted.

(*Id.* at 17) (emphasis added).

Accordingly, **IT IS ORDERED** that, no later than **June 21, 2010**, the parties shall provide the Court with a complete copy of **Trial Exhibit 215**.

IT IS FURTHER ORDERED that, no later than **June 21, 2010**, each party may file a brief of no more than twenty (20) pages, setting forth its position as to the narrow remand issue. Such briefs may only address the very narrow remand issue set forth above. Any brief filed that addresses issues outside of the narrow remand issue set forth in the Sixth Circuit's Opinion at page 17 shall be stricken and that party shall will be considered to have waived its opportunity to brief its position.

If the Court wishes to entertain oral argument after reviewing Trial Exhibit 215, and any briefs filed by the parties, the Court will issue a separate notice.

IT IS SO ORDERED.

S/Sean F. Cox
Sean F. Cox
United States District Judge

Dated: June 9, 2010

I hereby certify that a copy of the foregoing document was served upon counsel of record on

June 9, 2010, by electronic and/or ordinary mail.

S/Jennifer Hernandez

Case Manager